

**STATE OF GEORGIA  
COUNTY OF FULTON  
CITY OF SOUTH FULTON**

**ORDINANCE No. 2017-012**

**ADOPTION OF ORDINANCE ESTABLISHING THE BOARD OF CODE  
ENFORCEMENT FOR THE CITY OF SOUTH FULTON**

**WHEREAS**, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

**WHEREAS**, the City Council is authorized by O.C.G.A. § 36-35-3 to adopt ordinances relating to its property, affairs, and local government;

**WHEREAS**, the duly elected governing authority of the City is the Mayor and City Council;

**WHEREAS**, Section 4.11 of the City Charter authorizes the City Council to create such boards, commissions and authorities to fulfill any investigative, quasi-judicial, or quasi-legislative function the City Council deems necessary;

**WHEREAS**, the City is charged with preserving the health, safety, and welfare of its citizens; and

**WHEREAS**, O.C.G.A. § 36-74-3 authorizes the City to create a local code enforcement board; and

**WHEREAS**, the establishment of a code enforcement board within the City's borders is in the best interest of the City.

**THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS**  
as follows:

**Section 1:** The City of South Fulton Code of Ordinances, Chapter 4, Title 3, Building Regulations, is hereby established and enacted as follows:

**Title 3: Building Regulations**

**CHAPTER 4. – BOARD OF CODE ENFORCEMENT**

**Sec. 3-4001.** – Board of Code Enforcement established.

- (a) *Creation.* There is hereby established a Enforcement Board which shall consist of eight members, residents of the city, who shall be appointed by the City Council as follows:
- (1) One member shall be nominated by each member of the City Council and the Mayor; and
  - (2) Each member shall be approved by a vote of the majority of the City Council.
- (b) *Terms.* The Enforcement Board members shall serve a term consistent with that of the member of the City Council (or the Mayor) making the nomination. A Enforcement Board member shall serve until his or her replacement is appointed by the City Council in a manner consistent with this ordinance. The Enforcement Board members shall serve no more than two terms, either consecutive or non-consecutive, and a term shall end upon the swearing in or re-swearing in of the member of the City Council (or the Mayor) who nominates the Enforcement Board member.
- (c) *Chair and Vice Chair.* The Enforcement Board shall elect one of its members to serve as chairperson and another to serve as vice-chairperson. The chairperson and vice-chairperson of the Enforcement Board shall serve a term of one year or until reelected or a successor is elected. The duty of the chair shall be to conduct the meetings in accordance with the procedures set forth herein and any other rules or regulations established by the Enforcement Board. The vice-chairperson shall conduct the meetings in the chair's absence. The vice-chairperson may be appointed chair if the chair is removed from office, or due to a physical or mental disability, cannot perform the duties of chair.
- (c) *Qualifications.*
- (1) Members of the Enforcement Board shall hold no other city office or city-compensated position during such member's term.
  - (2) All Enforcement Board members shall be residents of the City.
  - (3) No person shall preside at a meeting of the Enforcement Board as a member of the Enforcement Board until they have been certified as having completed a training session of eight hours.
- (d) *Removal.*
- (1) Except as provided in paragraph (d)(2) of this Section, Enforcement Board members serve at the pleasure of the City Council and may be removed upon motion of the nominating commissioner and affirmative vote of a majority of the City Council.



(2) Enforcement Board members shall automatically be removed from the Board if they miss two consecutive meetings without the permission of the Chair, or if the Board member fails to attend at least 75 percent of the Board meetings in a 12 month period. The Board secretary shall notify the City Clerk of any Board member who does not attend a meeting. If a Board member is removed for failure to attend meetings as set forth in this paragraph, the removal is automatic and does not require a vote of the City Council.

(e) *Compensation.* The City Council shall, by resolution, determine the amount of compensation, if any, to be paid to the members of the Enforcement Board. In the absence of such resolution, no compensation shall be provided to the members of the Enforcement Board.

(f) *Jurisdiction.* The Enforcement Board shall have jurisdiction to decide matters and alleged violations of the City Building Code.

**Sec. 3-4002. – Officers and rules.**

The presence of four or more members shall constitute a quorum. The decisions of the Board shall be by motion approved by a majority of those members present and voting, except that at least four members must vote in order for an action of the board to be official. The Board member nominated by the Mayor shall not vote unless there is a tie. The City Attorney or his/her designee shall represent and be counsel to the Board; provided, however, in the case of a conflict between the City Council and the Board, the City Attorney shall represent the City Council.

The Board shall adopt and publish policies, procedures and rules in keeping with the provisions of this chapter and submit the rules to the City Council for approval. If the City Council does not approve of the policies within three consecutive meetings of receiving such notice by the City Clerk, the rules shall be deemed adopted. Such policies, procedures and rules shall be available in the office of the City Clerk.

**Sec. 3-4003. – Board Secretary.**

A City employee shall serve as the Board secretary. The secretary shall provide support to the Board as reasonable and necessary to accomplish said Commission's duties. The secretary of the Board shall provide the members of the Board all information submitted to, or generated by, city staff on each substantive issue that the Commission considers, including: proposals, applications, citation(s), if any, as well as any other written communications given to the staff either in support of or in the opposition to the citation. The secretary shall be responsible for working with the City Clerk to maintain the records of the Board.

**Sec. 3-4004. - Meetings.**

The Board shall establish its meeting schedule, and it shall meet at least twice a month. The Board may cancel a meeting if there are no items to discuss, or for good cause. Additional meetings may be called by the chairman. All hearings before the board shall be open to the public except as provided by law. The alleged violator, the alleged violator's representative, the code inspector and any person whose interests are affected shall be given an opportunity to be heard. The board shall proceed to hear the cases on the agenda for that day. All testimony shall be under oath and shall be recorded. The board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The initial presentation of each case before the board shall be by the code inspector.

**Sec. 3-4005. – Hearing.**

- (a) *General.* No member of the board shall have the power to initiate enforcement proceedings under this chapter. If a violation of any provision of the Code of Laws is found, the code inspector shall notify the violator and specify a reasonable time to correct the violation. If the violation is corrected and then recurs or if the violation is not corrected by the time specified the code inspector may so notify the violator, but is not required to give the violator a reasonable time to correct the violation. If a violation is not corrected within the time specified, the code inspector shall request a hearing before the board.
- (b) *Notification.* If a repeat violation is found, the code inspector shall notify the violator but is not required to give the violator a reasonable time to correct the violation. The code inspector, upon notifying the violator of a repeat violation, shall notify the board and request a hearing. The case may be presented to the board even if the repeat violation has been corrected prior to the hearing, and the notice for the violator shall so state. The matter shall be scheduled for the next available hearing before the board, and notice of the hearing shall be given as provided in section 3-7009.
- (c) *Violation presents threat to public welfare.* If the code inspector has substantial reason to believe a violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and immediately notify the board and request a hearing.
- (d) *Continuance.* The board may continue the hearing from time to time for good cause. The board shall, in all instances, reach a decision within 15 calendar days from the date of the final hearing at which receipt of all evidence has been concluded.
- (e) *Postponed hearing.* When a quorum is not present, or the board is unable to reach a decision on a case, the hearing shall be postponed until the next scheduled board meeting, with notification provided in accordance with section 3-7009 of this chapter.
- (f) *Order to comply/order to pay fine.* Every order to comply and/or order to pay fine entered by the board shall be executed by the chairperson, or, in the chairperson's absence, the vice-chairperson, and shall be filed in the office of the secretary to the board.



(g) *Variances.* The Code Enforcement Board, when so appealed to and after a hearing, may vary the application of any provision of the construction codes to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the construction codes or public interest, and also finds all of the following:

- (1) That special conditions and circumstances exist which are peculiar to the building, structure, or service system involved and which are not applicable to others.
- (2) That the special conditions and circumstances do not result from the action or inaction of the applicant.
- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the construction codes to other buildings, structures, or service system.
- (4) That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure, or service system.
- (5) That the grant of the variance will be consistent with the general intent and purpose of the construction codes and will not be detrimental to the public health, safety, and general welfare.

In granting the variance, the Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the Board may prescribe appropriate conditions and safeguards in conformity with the construction codes. Violation of the conditions of a variance shall be deemed a violation of the construction codes.

**Sec. 3-4006. – Hearing notification.**

- (a) Notification of the board hearing to the alleged violator shall be given by certified mail, return receipt requested, hand delivery by the code inspector or other persons designated by the City, by leaving said notice at the violator's usual place of residence with any person therein who is over 15 years of age and informing such person of the contents of the notice; or by leaving the notice at the violator's usual place of business with a manager or other upper level employee who is over 15 years of age and informing such person of the contents of the notice, no later than the 15th day before the date of the hearing. The notice shall be in a form approved by the City Manager and shall include a reference to the provisions of the Code of Laws and/or conditions of zoning being violated, and the date, time and location of the hearing.
- (b) At the option of the board, and in addition to the notice described above, or if repeated attempts at providing notice as described above are unsuccessful, notice of the hearing may be published 30 days prior to the hearing once a week for four

consecutive weeks in the newspaper in which the sheriff's advertisements are printed for Fulton County. Proof of publication shall be provided and maintained for the official record.

- (c) Where efforts to provide notice pursuant to paragraph (a) of this section are unsuccessful, evidence of an attempt to serve the alleged violator pursuant to paragraph (a) together with proof of publication as provided in paragraph (b) shall be sufficient to show that the notice requirements of this section have been met, without regard to whether or not the alleged violator actually received such notice

**Sec. 3-4007 – Decisions of the Board.**

- (a) If, after the conclusion of the hearing, the board finds that a violation does exist, the board may issue an order to comply consistent with the powers granted in this chapter, with findings and conclusions. An order to comply shall set forth the street address or a description of the structure and/or premises sufficient for identification. An order to comply shall include notice that it must be complied with by a specified date and that an administrative fine may be imposed if the order is not complied with by said date. The order shall state the nature of the violation, and the board shall consider the following factors in determining the content of the order to comply.
  - (1) Existence or nonexistence of a life, health or other type of hazard to the occupant or others in the building or premises;
  - (2) Severity of the hazard or negative effect upon the community;
  - (3) Number and extent of separate items that must be completed in order to bring the building or premises into compliance with the relevant codes;
  - (4) Length of time the violation(s) has been known to exist and the amount of time the code inspector has previously given for compliance;
  - (5) The existence or nonexistence of mitigating factors which caused the building or premises to be in violation or which may affect the amount of time for compliance.
  - (6) The board may divide the violation(s) into groups requiring compliance at various intervals, with inspections to be conducted at each stage by the code inspector.
  - (7) Whether the person coming before the Board, or if the person is a corporation, whether any of its officers, members, or directors have been found liable for previous violations,.
- (b) An order to pay fine shall specify the fine amount as determined and voted upon by the board, as well as the date and time the fine is due.
  - (1) A certified copy of such order may be recorded in the public records of the City and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation



concerns real property, any subsequent purchasers, successors in interest or assigns. If an order to pay fine is recorded in the public records pursuant to this subsection and the fine is paid by the date and time specified in the order, the board shall issue an order acknowledging that the fine has been paid in full and such order shall be recorded in the public records. A hearing is not required to issue such an order acknowledging the payment of a fine.

(2) The board may issue an order to pay a fine against the violator if the cited violation was not corrected within the time specified on the code inspector's notice or if an order to comply was not satisfied within the time specified in said order, even if said violation was corrected and brought into compliance prior to the hearing at which the fine was imposed.

**Sec. 3-4008. – Notification of decision.**

The board shall provide the violator a copy of the order to comply and/or the order to pay fine by at least hand delivery or certified United States mail, postage prepaid and return receipt requested, within a reasonable period of time after the decision.

**Sec. 4-4009. - Fines and fees.**

The board may impose fees and fines on a violator as follows:

- (1) A fine not to exceed \$1,000.00 per day for a violation involving the health or safety of a third party.
- (2) A fine not to exceed a total of \$1,000.00 for a violation not involving the health or safety of a third party.
- (3) The board shall determine fines considering the following factors:
  - a. The gravity of the violation;
  - b. Any actions taken by the violator to correct the violation; and
  - c. Any previous violations committed by the violator.
- (4) The board may reduce a fine imposed pursuant to this section.
- (5) Each day that the violation continues unabated shall be deemed an independent violation.

**Sec. 3-4010. - Failure to pay fine.**

- (a) A certified copy of an order to pay fine may be recorded in the public records of the City and thereafter shall constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition

to the Superior Court, such order may be enforced in the same manner as a court judgment by the sheriffs of the state, including levy against personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. After three months from the filing of any such lien which remains unpaid, the board may request that the county attorney foreclose on the lien.

- (b) No lien imposed under this chapter shall continue for a period longer than 20 years after the certified copy of an order to pay fine has been recorded, unless within that time an action to foreclose on the lien is commenced in Superior Court. In an action to foreclose on a lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fees, which it incurs in the foreclosure. The continuation of the lien affected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

### **Sec. 3-4011. - Remedies.**

Nothing contained in this ordinance shall prohibit the board, acting through the code inspector, from enforcing this ordinance by any other lawful means which include both criminal and civil proceedings; provided, however, that the board shall not pursue a specific instance of an alleged violation of the Code of Laws against the violator before both the board and a court authorized to hear violations of local ordinances.

### **Sec. 3-4011. - Appeal and transfer.**

An aggrieved party, including the City, may appeal a final administrative order of the board to the Superior Court of Fulton County by writ of certiorari.

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### **Section 2: Severability**

In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of South Fulton, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the ordinance.

### **Section 3: Repealer**

All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

### **Section 4: Effective Date**



Unless specifically specified elsewhere in this Ordinance, the effective date of this Ordinance shall be July 12, 2017.

The foregoing Ordinance No. **2017-012** was offered by **Mayor Pro Tem Rowell**, who moved its approval. The motion was seconded by Councilmember **Willis**, and being put to a vote, the result was as follows:

**“SECOND READ”**

	AYE	NAY
William “Bill” Edwards, Mayor	<hr/>	<hr/>
Catherine Foster Rowell, Mayor Pro Tem	<hr/> √	<hr/>
Carmalitha Lizandra Gumbs	<hr/> √	<hr/>
Helen Zenobia Willis	<hr/> √	<hr/>
Gertrude Naeema Gilyard	<hr/> √	<hr/>
Rosie Jackson	<hr/> √	<hr/>
khalid kamau	<hr/> √	<hr/>
Mark Baker	<hr/> √	<hr/>



THIS ORDINANCE adopted this 11th day of July 2017. CITY OF  
SOUTH FULTON, GEORGIA



WILLIAM "BILL" EDWARDS, MAYOR

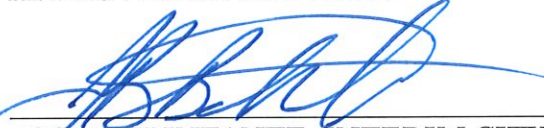
ATTEST:



MARK MASSEY, CITY CLERK



APPROVED AS TO FORM:



JOSH BELINFANTE, INTERIM CITY ATTORNEY